



**Fonds au Profit des Victimes**  
**The Trust Fund for Victims**



## **Report of the Board of Directors of the Trust Fund for Victims**

Seventeenth Session of the Assembly of States Parties

*The Hague, 5 December 2018*

Delivered by

**Motoo Noguchi**

Chair of the Board of Directors of the Trust Fund for Victims

Good morning, Mr President, Your Excellencies, Distinguished Ladies and Gentlemen,

It is my great pleasure to address you on behalf of the Board of Directors of the Trust Fund for Victims. I am honored by the presence of the four other members of the Board: Baroness Arminka Helic, Ms Mama Koité Doumbia, Ms Alma Taso-Deljkovic and Mr Felipe Michelini. This is the last report from the present Board elected three years ago. As I am completing my second and last term as a member of the Board, this is also my last address to you as the Chair of the Board. On this opportunity I would like to thank my colleague Board members and the

Executive Director Pieter de Baan for their support. I also thank all the Secretariat staff for their commitment and engagement under the most demanding circumstances.

Since the inception of our assistance programmes in 2008, we have prioritized to address the harm suffered by most vulnerable victims, including victims of sexual and gender-based violence. Some of our donors have responded with earmarked contributions to support such victims suffering from mental and physical trauma, as well as from stigmatization in their families and communities.

The total number of beneficiaries of assistance programmes in northern Uganda and eastern DRC has amounted to more than 400,000. In both countries, multi-annual programme cycles will start in 2019. New assistance programmes are in development in Cote d'Ivoire and in the Central African Republic. Their implementation will also start in 2019.

The Board's decision in June this year to accelerate the relaunch of the Trust Fund's CAR assistance programme is an example of the significance of assistance mandate. Recalling that our first attempt at an assistance programme in CAR failed in 2013 due to political conflict and related violence and insecurity, the current relaunch is mainly inspired by the desire to provide some form of reparative measure to victims who lost the possibility of Court-ordered reparations in the Bemba case due to the acquittal decision by the Appeals Chamber.

In 2018, the Trust Fund was engaged in reparations proceedings in four cases: Lubanga and Katanga in the DRC, Al Mahdi in Mali and Bemba in the Central African Republic.

In Lubanga, the Court's decision to set liability at 10 million US dollars, while still under appeals, offers the opportunity to profoundly expand upon the scope and form of reparations envisaged in the implementation plan approved last year on the basis of the initial complement by the Trust Fund of one million Euros. The flaring up of communal and political strife in the Ituri province of eastern DRC induced hostilities against the reparations awards, temporarily stalling the implementation of the symbolic reparations awards.

In Katanga, the Trust Fund started the implementation of individual and collective awards.

In Al Mahdi, the Trust Fund submitted an updated implementation plan in November, responding to instructions of the Trial Chamber following the first draft implementation plan submitted in April. Ongoing conflict in northern Mali made travel to and consultations in Timbuktu, the place of the convicted crimes, a nearly impossible task to accomplish. The Trust Fund had to resort to alternative modes of contact.

In the reparations implementation phase, the Trust Fund encounters common features and dynamics as follows:

- (1) a steep and significant increase in workload, induced by new and unfamiliar activities, as well as by the Court's instructions for the Trust Fund to directly deliver reparations awards;
- (2) complexity induced by legal proceedings and contextual challenges;
- (3) intense collaborative working relationship with the legal representatives of victims, relevant Sections of the Registry, domestic authorities, international organizations and locally based partners;
- (4) considering the Court's initial practice and jurisprudence of establishing liability for reparations, an obvious need to intensify and diversify resource mobilization.

Mr President, Ladies and Gentlemen,

At the institutional level, the Trust Fund is facing two grave challenges: implementation capacity and financial resources. Both relate to the Trust Fund's responsiveness to its mandates.

For the last few years, and particularly during this one year, the Secretariat staff has been stretched to a maximum extent to cope with radically increasing workload both in The Hague and in the field. They are now clearly overstretched and no more capable of addressing all the existing workload. Some posts approved for 2018 have not been filled due to the unexpected delay of recruitment process. They will be filled

soon. The new posts being requested for 2019 are budgeted for several months only in view of the necessary recruitment time. The budget proposal from the Trust Fund for your review and approval for the year 2019 is to fill the remaining resource gap and allow for the Trust Fund to continue its services in a professional and responsible manner. I would like to request your kind understanding and consideration in this regard.

The Board is pleased by the level of voluntary contributions of this year which is anticipated to reach about four million Euros, which is more than 30% increase from last year. I would like to thank all the donors for their generous contributions and invite new donors to join them.

Yet depending fully on voluntary contributions is likely to be insufficient to ensure the Trust Fund's uninterrupted responsiveness to the needs of victims. The Trust Fund's available resources have already run short of even complementing all of the existing three reparations orders where the convicted persons were found indigent, totalling close to 15 million US dollars. It is very likely that the volume of future reparations orders will be of growing significance.

While the Board cannot be legally compelled to financially complement the payment of reparations awards in the circumstance of indigence of convicted persons who are liable for reparations, the Board reiterates the moral obligation it feels to make reparative justice a reality for victims

and therefore to seek to ensure that adequate resources are available towards this purpose.

In the Board meeting held on Monday and Tuesday this week, the Board had intensive discussions on this issue. In particular, it discussed the status of ongoing exploratory study on "the TFV Bond Initiative", which the Board had decided to conduct in its meeting in May 2018. Considering the outcome of consultations since then with key stakeholders, the Board decided to suspend the exploration of the study in its present shape and modality. The lack of appropriate financial resources is preventing continuation of the exploration. Moreover, the Board acknowledges a diversity of views in regard of the options and modalities available to the Trust Fund to respond to the significant challenge of accomplishing its reparative mandates at a level well beyond the existing resources and in consideration of additional fundraising prospects with public and private donors.

The Board will continue to explore the best ways to diversify and strengthen the Trust Fund's resource base in consultation with States Parties, the Court and a broad range of stakeholders.

Mr President, Ladies and Gentlemen,

Reflecting on the last six years, I would like to mention a few points that could be shared as lessons-learnt for your consideration.

First, the importance of assistance mandate remains unchanged even if the reparations mandate has started in full operation. A next challenge is how to extend the Trust Fund's reach to victims into more situation countries, subject to ensuring the security and safety of victims and people involved. In situation countries where a reparations order was issued, to operate the both mandates in a way that complement each other must be carefully considered to provide maximum degree of redress to victims. Under the both mandates, the Trust Fund's intervention is not to replace the legal obligation of the States Parties to take care of sufferings of their own citizens, and the principle of complementarity should also apply here.

Second, reparations proceedings must be simple, fast and cost-effective in order to make them a meaningful redress for victims. Victims often have to wait at least for years and sometimes for more than a decade from the time of sufferings to the conviction, and they have to wait for some more years again to actually benefit from reparations awards ordered by the Court. Although sufficient consultations with victims are essential and appropriate degree of eligibility screening is necessary depending on the modality of reparations, it is important to make the process simple and fast so that the reparations awards can reach victims without further delay. Prolonged proceedings also become a physical and mental burden for victims or unnecessarily raise their expectations.

The reparations phase is composed of two different phases: The first is the judicial phase up until the issuance of a reparations order where the relevant Chamber and parties are main players and the Trust Fund's involvement is modest. The second is the implementation phase, an administrative phase starting after the issuance of the order, in which the Trust Fund plays a much greater role, subject to the Chamber's approval of a draft implementation plan and continuous judicial oversight as necessary. The clear differentiation between these two phases will allow all the parties and stakeholders to contribute respectively to the proceedings in the most meaningful and efficient manner. The clear differentiation between collective reparations and individual reparations will also help formulate a comprehensive package to address different needs of victims in the most meaningful way.

How to conduct reparations proceedings also has substantial resource implications. A sound balance needs to be found between the legal and technical precision and the reality of victims under the most challenging circumstances in the field. The resource implications concern not only the Trust Fund Secretariat staff, but also all the relevant players including the Chambers, the parties, and the Registry. Moreover, the effectiveness and efficiency of reparations proceedings will likely to impact the Trust Fund's ability to raise funds earmarked for reparations.

Reparations proceedings are an important and integral part of the judicial proceedings. Efforts to bring justice begin with investigation and prosecution, proceed to trials and convictions, and end in reparations proceedings. These are a package for justice under the Rome Statute. If reparations orders stand unfulfilled due to the indigency of the convicted and the lack of resources at the Trust Fund to complement, there is a risk of judicial orders becoming an empty promise only on paper. The provision of real and meaningful redress to victims is a matter of credibility for the entire Rome Statute system.

Mr President, Ladies and Gentlemen,

Before concluding, I would like to thank you for your support to the present Board for the last three years and to me for the last six years. I would also like to thank the Court principals, judges and all the Court staff. Special appreciation goes to the Registrar who helped the Board in his advisory capacity and his staff in the various sections in the Hague and in the field offices.

It was undoubtedly challenging timing but there were many exciting and rewarding moments for the Trust Fund. It was my greatest honor to be a part of the huge collaborative work under the Rome Statute to realize victims' justice which was promised 20 years ago. After leaving the Board, I will remain engaged with the ICC in my domestic capacity

of Ambassador for International Judicial Cooperation at the Ministry of Foreign Affairs of Japan.

In concluding the term of the present Board, I would like to request unchanged support to the new Board that will be elected later today.

Thank you for your attention.

- Check against delivery -